

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARY E. WHITE

Claimant

VS.

CESSNA AIRCRAFT COMPANY

Respondent

Self Insured

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Docket No. 236,853

ORDER

Claimant appealed Administrative Law Judge Nelsonna Potts Barnes' May 15, 2000, preliminary hearing Order.

ISSUES

This is claimant's post-award request for payment of temporary total disability benefits. After the May 9, 2000, preliminary hearing, the Administrative Law Judge in the May 15, 2000, preliminary hearing Order denied claimant's request.

On appeal, claimant contends the Administrative Law Judge erred in denying her request for temporary total disability benefits. Claimant argues she presented uncontradicted evidence at the preliminary hearing through her testimony and the admission of a work status note signed by her treating physician that she has been unable to work since March 29, 2000. Claimant contends the statute that defines when temporary total disability exists is clear and unambiguous and does not disqualify an injured worker from receiving temporary total disability benefits because the worker is receiving retirement benefits.¹

In contrast, the respondent contends the Appeals Board does not have jurisdiction to review this issue because the issue is a preliminary hearing issue. The preliminary hearing statute gives the administrative law judge authority to grant or deny medical treatment and temporary total disability compensation pending a full hearing on the claim.² Therefore, respondent argues the Appeals Board does not have jurisdiction to review a

¹See K.S.A. 44-510c(b)(2).

²See K.S.A. 1999 Supp. 44-534a(a)(1).

preliminary hearing issue unless that issue is either listed as a jurisdictional issue in the preliminary hearing statute³ or the appealing party alleges the Administrative Law Judge exceeded her jurisdiction.⁴

Additionally, the respondent argues claimant voluntarily retired from her employment with the respondent on May 1, 1999. She has not worked or sought other employment since she retired. Therefore, the respondent contends claimant has taken herself out of the labor market and has no need for temporary total disability benefits to compensate her for any actual wage loss.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant made this post-award request for payment of temporary total disability benefits by filing an Application for Preliminary Hearing. After the preliminary hearing, in an Order dated May 15, 2000, the Administrative Law Judge denied claimant's request.

Respondent first contends the Appeals Board should dismiss the appeal because the Appeals Board does not have jurisdiction to review this preliminary hearing issue. The preliminary hearing statute gives the administrative law judge authority to grant or deny a request for medical treatment and temporary total disability benefits. The Appeals Board has jurisdiction to review a preliminary hearing issue only if the issue is one of the jurisdictional issues listed in the preliminary hearing statute⁵ or the appealing party alleges that the Administrative Law Judge exceeded his jurisdiction.⁶

The Appeals Board concludes, since this is a post-award request for temporary total disability benefits, the Appeals Board has jurisdiction to review this issue. The Appeals Board finds the Order issued by the Administrative Law Judge is not a preliminary hearing order as designated in K.S.A. 44-534a. Rather, the Order is a final order and the Appeals Board has jurisdiction to review final orders under K.S.A. 44-551(b)(1).⁷

³See K.S.A. 1999 Supp. 44-534a(a)(2).

⁴See K.S.A. 1999 Supp. 44-551(b)(1).

⁵See K.S.A. 1999 Supp. 44-534a(a)(2).

⁶See K.S.A. 1999 Supp. 44-551(b)(1).

⁷ See Bryant v. U.S.D. No. 259, 26 Kan. App. 2d, 435, 992 P.2d 808 (1999). In Bryant, the issue on appeal from a preliminary hearing order was a request for post-award medical treatment. The Appeals Board, however, interprets Bryant to also apply to a post-award request for temporary total disability benefits.

K.S.A. 44-510c(b)(2) states as follows:

Temporary total disability exists when the employee, on account of the injury, has been rendered completely and temporarily incapable of engaging in any type of substantial and gainful employment.

Actual wage loss is an appropriate factor in a temporary disability case because temporary disability benefits are intended to compensate a worker for his or her temporary reduction of wages while recuperating from a work-related injury.⁸

Here, claimant voluntarily retired from respondent's employment on May 1, 1999, and has not worked or looked for work since her retirement. Although claimant's present medical condition temporarily restricts her from engaging in any type of employment, she is retired and is not working. Therefore, the Appeals Board concludes claimant has not suffered an actual wage loss. Accordingly, the Appeals Board concludes claimant does not need compensation from a temporary reduction in wages while recuperating from a work-related injury.

WHEREFORE, the Appeals Board affirms Administrative Law Judge Nelsonna Potts Barnes' May 15, 2000, Order that denied claimant's post-award request for payment of temporary total disability benefits.

IT IS SO ORDERED.

Dated this ____ day of June 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
P. Kelly Donley, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director

⁸ See Brown v City of Wichita, 17 Kan. App. 2d, 72, 76, 832 P.2d 365, *rev. denied*, 251 Kan. 937 (1992).